Supreme Court, U.S.
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No. 98-769

(3)

In The

Supreme Court of the United States

October Term, 1998

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

HORACE B. WETHERALL, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court
Of The State Of Connecticut

REPLY BRIEF

AUGUSTUS J. SIMMONS
Petitioner
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10 pp

ARGUMENT

#1 JURISDICTION

The Supreme Court of Connecticut in *Case v. Bush*, 93 Conn. 550, 552, 106 Atl. 822 quotes the United States Supreme Court on Jurisdiction:

"The Supreme Court of the United States defines Jurisdiction as the 'right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: First the court must have cognizance of the class of cases to which the one to be adjudged belongs; Second, the proper parties must be present; and Third, the point decided must be in substance and effect within the issue.' *Reynolds v. Stockton*, 140 U.S. 254, 268, 11 S. Ct. 773." Jurisdiction of the subject matter is not alone "cognizance of the class of cases to which the one to be adjudged belongs." In addition, "The point decided must be in substance and effect, within the issue."

Jurisdiction is conferred by statute, not by decisions of the court. *McDowell v. United States*, 159 U.S. 596, 598-599, 16 S. Ct. 111, 40 L.Ed 271; *Leary v. United States*, 268 F.2d 317, 320 C.A. 7th Affirmed, 363 U.S. 335, 80 S. Ct. 1084, 4 L.Ed 2d 1254.

The parties cannot confer jurisdiction of the subject matter by consent, waiver, silence or agreement. *Simmons v. State*, 160 Conn. 492 (1971).

That there is no principle better settled than that a judgment or decree cannot be entered in the absence of pleadings upon which to found the same. *Lilly v. Claypool*, 59 W. Va. 130, 133, 53 S.E.22. Under Connecticut citations, any judgment should conform to the pleadings, the issues, and the prayers for relief. *Brill v. Ulrey*, 159 Conn. 371, 374, 269 A.2d 267; *Verraster v. Tynon*, 152 Conn. 645, 648, 211 A.2d 150. That a judgment or decree cannot be rendered if pleading on which to found it are lacking, *Strimska v. Yates*, 158 Conn. 179, 185; *Howarth v. Northcott*, 152 Conn. 460, 466.

The Connecticut Supreme Court had occasion to discuss this principle in *New Haven Sandblast Co. v. Driesbach*, 104 Conn. 322, 330, 133 A.99. In that case, the court stated:

A defect in a judgment arising from the fact that the matter decided was not embraced within the issue has not, it would seem, received much judicial consideration. And yet I cannot doubt that, upon general principles, such a defect must avoid judgment.

133 A. at 102 (citation omitted). The court also stated quoting Black on judgments (2d Ed) Vol I, § 215:

Besides jurisdiction of the person of the defendant and of the general subject matter of the action, it is necessary to the validity of the judgment that the court should have had jurisdiction over the precise question which its judgment assumes to decide, or of the particular remedy or relief which it assumes to grant * * * and third, the point decided must be in substance and effect within the issue.

#2 *SIMMONS V. WETHERALL*, #163875

Special Act #170 (1969) (*Simmons v. Wetherall* #163875) is not a statute of general application. It is designated by the state as a special act and is printed among the special acts. Its application is in terms restricted to damages. Neither the private attorneys acting as "The Court" nor the Supreme Court of Connecticut acted within their authority, for no valid taking by eminent domain was given by this act, that is not a "public" act.

Neither in form or substance does this act resemble the ordinary grant of the exercise of the power of eminent domain. Its purported grant of authority to acquire land for Federal-Aid/Federal Projects was wholly inoperative.

Courts may not "read into clearly expressed legislation provisions which do not find expression in its words". *Brunswick Corp. v. Liquor Control Commission*, 184

Conn. 75, 81, 440 A.2d 792 (1981), quoting *International Business Machines Corp. v. Brown*, 167 Conn. 123, 134, 355 A.2d 236 (1974).

When the language used in a statute is clear and unambiguous, its meaning is not subject to modification by construction. *State v. Simmons*, 155 Conn. 502, 504, 234 A.2d 835; *Hurlbut v. Lemelin*, 155 Conn. 68, 73, 230 A.2d 36. It is not the function of the courts to read into clearly expressed legislation provisions which do not find expressions in its words; *Lenox Realty Co. v. Hackett*, 122 Conn. 143, 150; nor is it a court function to substitute its own ideas of what might be a wise provision in the place of a clear expression of the legislative will. *Connelly v. Bridgeport*, 104 Conn. 238, 249, 132 A.690. When Legislation contains a specific definition, the courts are bound to accept that definition, *Danbury v. Corbett*, 139 Conn. 379, 384, 94 A.2d 6.

To hold otherwise, then the courts would be legislating by adding a new class to the coverage of this act which proclaims its limited scope. This courts cannot do. [I]t is up to the legislatures, not courts, to decide on the wisdom and utility of legislation. . . . [C]ourts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws, *Ferguson v. Skrupa*, 372 U.S. 726, 728-30, 83 S. Ct. 1028, 10 L. Ed 2d 93 [1963]. . . . *DuPont v. Planning & Zoning Commission*, 156 Conn. 213, 220, 240 A.2d 899 (1968).

As was said by the court in *Windsor v. McVeigh*, 93 U.S. 274, 282, 23 L. Ed. 914: The courts must act judicially in all things, and cannot then transcend the power conferred by law. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. The judgments mentioned, given in the cases supposed would not be merely erroneous; they would be absolutely void, because the court in rendering them would transcend the limits of its authority in those

cases. See also *Standard Oil Co. v. Missouri*, 224 U.S. 270, 32 S. Ct. 406, 56 L. Ed. 760.

#3 WRITTEN STATEMENT OF COMPENSATION

The decision of the Connecticut Supreme Court (180 Conn. 587), without any written statements of compensation to the court, the owner, indispensable parties, town clerk is in conflict with *City of San Jose v. Great Oaks Water Co.*, 237 Cal. Rptr. 845 (Cal. App. I Dist. 1987), where a public entity may acquire property by eminent domain only if it first makes offer to property owner and provides him written statement explaining way offer is just, establishes "mandatory" requirements which must be observed by any public entity planning to initiate eminent domain proceedings through resolution of necessity.

The Supreme Court of Connecticut has ruled in *Karp v. Urban Redevelopment Comm. of Stamford*, 162 Conn. 525, 294 A.2d 633 That the filing of a written statement of compensation with the Clerk's Office of the Supeiror Court *did not* originate a civil action, and the supporting cite – *Simmons v. State*, 160 Conn. 492, 494 n, 280 A.2d 351.

#4 APPRAISALS

The decision of the Connecticut Supreme Court (180 Conn. 587) for the taking of Federal-Aid/Federal Project real property without any appraisals to establish fair market value is in conflict with *Bethune v. United States*, 376 F. Supp. 1074 (1972) wherein the county which had commenced actions to condemn property within area proposed to be taken for a public park would be enjoined from further prosecution of the actions until it had complied with the federal statutes requiring that the acquiring agency appoint an appraiser who shall provide to owner of land an opportunity to accompany appraiser during his inspection of the property and until county had provided substantial and effective relocation assistance to property owners, uniform relocation assistance

and real property acquisition policies act of 1970 §§ 101(3, 6, 8) 205(a, c)(c)(2-4), 301(1-3, 7), 42 U.S.C.A. §§ 4601(3, 6, 8), 4625(a, c)(2-4) 4651(1-3, 7).

The Supreme Court decision is in conflict with 49 C.F.R. § 24.102 and *State of Missouri ex rel. Wetherby-Adv. Co. v. Frank Conley*, 527 S.W. 2d 334.

#5 FRAUD UPON THE COURT

Where, the Attorney General's Office submits exhibits to the court in the appendix (Exhibit A-6) and intentionally, in bad faith, delete, eliminate Vol. 59, pages 661-662 of the Town of East Granby land records that contains a citation that was never served upon the parties listed with a return day of the first Tuesday of July, 1978 and where there was no return of service to the court of competent jurisdiction and at Vol. 59, p. 668 contains a stamp and seal of the Clerk of the Superior Court (Thomas H. Abraham) dated June 5, 1978 at Vol. 59, p. 668, that is also eliminated from the Exhibit A-6 of Respondents Brief to shield, shelter, cover-up the decision of the Connecticut Supreme Court, (180 Conn. 587), where there were no pleadings before the Superior Court, is, fraud upon the court.

The intentionally deleted citation, and court stamp, are hereby incorporated as part of Plaintiff's Reply Brief.

Respectfully submitted,

Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX

CITATION

TO THE SHERIFFS OF THE COUNTIES OF HARTFORD AND NEW HAVEN, THE DEPUTIES OR EITHER CONSTABLE OF THE TOWNS OF HARTFORD, WEST HARTFORD, MERIDEN, WAREHOUSE POINT, NEW BRITAIN, AND EAST GRANBY, WITHIN SAID COUNTIES,

GREETINGS:

BY AUTHORITY OF THE STATE OF CONNECTICUT, You are hereby commanded to summon Jerome H. Diamond, 25 Arlon Way, West Hartford, Conn., Thomas P. Byrne, Esq., 790 Farmington Avenue, West Hartford, Conn., Leonidas D. Simmons, c/o Danaher & Danaher, Esqs., 51 Parker Avenue, Meriden, Conn., Connecticut Bank & Trust Co., One Constitution Plaza, Hartford, Conn.; Hartford National Bank, 777 Main Street, Hartford, Conn., Leonard Allsire, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Patsy Valente, c/o Walter E. Bass, Jr., Esq., 148 R North Road, Warehouse Point, Conn., Westside Vallet Parking, Inc., c/o Charles Gersten, Esq., 234 Pearl Street, Hartford, Conn., David B. Salzman, c/o Jason Pearl, Esq., 19 S. High Street, New Britain, Conn., and Angelo J. Roncari, P.O. Box 268, East Granby, Conn. and them summon to appear before the Superior Court to be held in the County of Hartford at Hartford, on the first Tuesday of July, 1978, at 10:00 o'clock in the forenoon, said appearance to be made by said Jerome H. Diamond, Thomas P. Byrne,

Leonidas D. Simmons, Connecticut Bank & Trust Company, Hartford National Bank, Leonard Allsire, Patsy Valente, Westside Vallet Parking, Inc., David B. Salzman, and Angelo J. Roncari, or their attorneys, on or before the second day following said return date, then and there to answer unto the Commissioner of Transportation of the State of Connecticut, of the Town of Wethersfield, County of Hartford, in a civil action, wherein the plaintiff complains and says:

Each lienor, encumbrancer and/or party cited herein shall state whether or not he or they claim any estate or interest in or encumbrance on the property described herein or any part thereof, and, if so, the nature and extent of the estate, interest or encumbrance which he or they claim, and he or they shall set out the manner in which such estate, interest or encumbrance is claimed to be derived.

PLAINTIFF,
COMMISSIONER OF
TRANSPORTATION
STATE OF CONNECTICUT

BY: CARL R. AJELLO
ATTORNEY GENERAL

/s/ William A. McQueeney
William A. McQueeney – 85340
AAG-Trans-6
P.O. Box 120
Hartford, Connecticut 06101

EXHIBIT B (Continued)

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever, agree that the Premises owned by the State of Connecticut shall be used for aeronautic purposes, including the operation of all types of aircraft, both conventional propeller driven and jet powered, as well as any other type of aircraft not heretofore operated from the airport, including but not limited to helicopters, and I further covenant and agree for myself, my heirs, administrators, and assigns that neither I nor any successor in interest of mine, will have any cause, claim or right of action against the State of Connecticut, or any of its successors in interest, as a result of aeronautics operations on, over or through the Premises owned by the State of Connecticut as the result of noise resulting from said aircraft operations as it may affect the Retained Premises. This covenant and agreement shall also run with the land and shall be construed as a real covenant running with the land unless and until such time as, by agreement with the State of Connecticut, its successors assigns, this covenant is terminated.

AND I, Augustus J. Simmons, for myself, my heirs and assigns forever and my successors in interest specifically waive and relinquish any rights in law or equity relative to said noise from aeronautics operations relating to the Retained Premises.

STATE OF CONNECTICUT)
) ss.
Hartford County)

(SEAL)

Received June 5, 1978
at 4:01 P.M.
By /s/ Marilyn L. Barstow
Asst. Town Clerk.

I, Thomas H. Abraham, Clerk of the Superior Court of said State within and for said County, HEREBY CERTIFY the foregoing on be a true copy of record, of the Supplemental Judgment, in No. 163875, Augustus J. Simmons vs Horace B. Wetherell, et al.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Superior Court, at Hartford, of said County, this 5th day of June 1978

/s/ Thomas H. Abraham
CLERK